

House Bill 1646

Public Law 156-2009 (House Enrolled Act 1646) ("HEA 1646") was signed by the Governor on May 12, 2009. HEA 1646 makes several revisions to the Indiana Loan Broker Act that will affect all loan brokers, principal managers, and originators. The following is a summary of some of the key provisions of HEA 1646, but this should not be viewed as a complete account of all changes to the Act.

Secretary of State Todd Rokita and the Indiana Securities Division were pleased to partner with the Indiana General Assembly to continue to ensure a Loan Broker Act for Indiana that offers sufficient protections for consumers while enhancing the professionalism of the mortgage industry.

Everyone licensed or registered with the Securities Division is encouraged to read the Loan Broker Act as well as HEA 1646. The key provisions are broken into two categories, changes taking effect July 1, 2009, and changes taking effect January 1, 2010.

Changes taking Effect July 1, 2009

- All exemptions have been removed from the Loan Broker Act
 - Including exemptions for attorneys, investment advisers, broker-dealers,
- Any knowing violation of the Loan Broker Act is a Class C felony
- Any knowing violation of the Act is a Class B felony if the offense occurs against a person over the age of 60
- A violation of certain federal laws is a violation of the Loan Broker Act
 - Real Estate Settlement and Procedures Act (RESPA)
 - Truth in Lending Act (TILA)
 - Equal Credit Opportunity Act (ECOA)

Changes taking Effect January 1, 2010

These changes take effect January 1, 2010, and will apply for the next renewal in late 2009.

- All principal managers and mortgage loan originators are given a license
- The definition of Mortgage Loan Originator has changed to:
 - Performing any of the following activities for compensation
 - Receiving application information for use by a creditor
 - Offering to negotiate or negotiating loan terms
- Loan Processor is defined in the statute as:
 - Performing solely clerical tasks
 - Communicating with the borrower to obtain necessary information so long as communication does not include
 - Discussion of the terms of the loan
 - Negotiation of the loan

- Branch Office is defined in the statute:
Any fixed physical location where the loan broker demonstrates to the public that the physical location is a place where it engages in the loan broker business
- **New Requirements through the NMLS**
 - Pre-licensing and Continuing Education classes will be approved through the NMLS
 - Initial education reduced to 20 hours within 24 months prior to application
 - Continuing education increased to 8 hours per calendar year after year of application
 - Pre-licensing Exam will be developed by the NMLS, which will include a state-specific portion
 - As a requirement by the federal government, everyone currently licensed will need to take the exam once it becomes available
 - Until the NMLS exam is online, the current loan originator and principal manager exams are required
 - The NMLS will create a process to collect credit reports from Mortgage Loan Originators
 - Once that process has been created, the credit report will be required prior to a license being issued
 - Criminal background checks will be required every 3 years and will be submitted through the NMLS
 - Loan Brokers will be required to submit a report of their activities through the NMLS
 - Information about the report will be distributed as it is made available
 - The Securities Commissioner must deny an application and revoke the license of a Mortgage Loan Originator or Principal Manager for any of the following reasons
 - The individual has committed a felony within the previous 7 years
 - The individual has committed a felony involving fraud or deceit at any point
 - The individual has not completed the required education
 - The individual has not passed the required test
 - The individual has had his or her license as a Mortgage Loan Originator or Principal Manager denied or revoked in Indiana or in any other state
 - Fails to maintain the required records or fails to allow the Securities Division to examine those records
 - Fails to demonstrate financial responsibility
- The Bond requirement for loan brokers has changed to include graduated amounts based on the volume of loans originated the previous calendar year
 - **\$50,000** if the loan broker originated less than \$5 million in loans in previous year
 - **\$60,000** if the loan broker originated less than \$20 million but more than \$5 million in loans in previous year

- **\$75,000** if the loan broker originated more than \$20 million in loans in previous year
- Changes to the loan broker examinations
 - Loan Files and other records are to be kept in office where the loan was originated
 - If the loan broker is out of state, physical records or electronic equivalent must be made available within 10 business days
 - A pipeline report is included as part of the audit and must be made available upon request
- License numbers of the loan broker, mortgage loan originator, and principal manager must be included on the Loan Broker Agreement, but are not necessary on any other document

PLEASE NOTE THAT THIS IS NOT A COMPLETE ANALYSIS OF HEA 1646